

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CYPRESS HOLDINGS, III, L.P.,	:	
Plaintiff,	:	
	:	22 Civ. 1243 (LGS)
-against-	:	
	:	<u>ORDER</u>
SPORT-BLX, INC., et al.,	:	
Defendants.	:	
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LORNA G. SCHOFIELD, District Judge:

WHEREAS, this case was commenced on February 24, 2022;

WHEREAS, on May 31, 2022, Defendants filed motions to disqualify Plaintiff’s original counsel, and discovery was stayed pending resolution of that motion;

WHEREAS, on August 23, 2022, Defendants’ motions to disqualify were granted, and discovery remained stayed for an additional thirty days to permit Plaintiff to retain new counsel;

WHEREAS, a case management plan and scheduling order was entered on October 18, 2022, setting a schedule in which fact discovery is to be completed by March 14, 2023, and in which amended pleadings may be filed only with leave of the Court after April 1, 2022;

WHEREAS, on January 17, 2023, Plaintiff filed a letter motion seeking leave to file a second amended complaint, which would add several additional defendants, claims and factual allegations all closely related to the claims asserted in the prior complaints;

WHEREAS, according to Plaintiff’s letter, which Defendants do not dispute on this point, Plaintiff first circulated a draft of the proposed second amended complaint (“PSAC”) on October 24, 2022, less than a week after the civil case management plan and scheduling order was entered, and circulated an updated version on December 15, 2022, and Plaintiff delayed in seeking leave to file the PSAC while negotiating with another potential additional defendant over its inclusion in the PSAC;

WHEREAS, because the Court's prior order setting a deadline for amended pleadings provided for later amendments with leave of the Court, the standards under Rule 15 and not Rule 16 apply to Plaintiff's motion, *Sacerdote v. N.Y. Univ.*, 9 F.4th 95, 115 (2d Cir. 2021);

WHEREAS, under Rule 15, leave to amend shall be given freely and the only grounds for denial are "undue delay, bad faith, dilatory motive, or futility," *id.* (cleaned up);

WHEREAS, Defendants do not argue that amendment would be futile, and Defendants' conclusory assertions about Plaintiff's bad faith or dilatory motive are unpersuasive;


WHEREAS, "mere delay, absent a showing of bad faith or undue prejudice, does not provide a basis for a district court to deny the right to amend," *Pasternack v. Shrader*, 863 F.3d 162, 174 (2d Cir. 2017); *accord Cho v. Blackberry Ltd.*, 991 F.3d 155, 169 (2d Cir. 2021);

WHEREAS, Plaintiff's request presents a close question whether amendment at this stage would unduly delay the case and prejudice Defendants by multiplying the costs of litigation. Based on Plaintiff's representation that "[l]ittle additional discovery will be needed because the issues relating to the PSAC are already the subject of discovery or are otherwise known to the Defendants," any prejudice appears minimal. Based on that representation and the proposed new allegations, there should be little need to impose additional burdens on the current Defendants, and Plaintiff will be expected to conduct discovery on the new claims and from new Defendants efficiently to minimize any delay. Extensions of discovery deadlines will be granted only on a showing that Plaintiff has been diligent in seeking to maintain the current discovery schedule.

ORDERED that Plaintiff's motion for leave to amend is GRANTED. By **January 27, 2023**, Plaintiff shall file the PSAC.

The Clerk of Court is respectfully directed to close the motion at Dkt. No. 70.

Dated: January 25, 2023
New York, New York


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE